APPENDIX A.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Tuesday, March 15, 1966

Before

HON. LUTHER M. SWYGERT, *Circuit Judge*
HON. .....
HON. .....

UNITED STATES OF AMERICA,
Petitioner,
No. 15607 vs.
HONORABLE HUBERT L. WILL, Judge, United States District Court for the Northern District of Illinois,
Respondent.

Upon consideration of the emergency petition of the United States of America for a stay order pending filing of a petition for mandamus, It Is Ordered that said stay be granted and all proceedings in Case No. 65 CR 432, *United States* v. *Simmie S. Horwitz,* and in Case No. 65 C 464, *United States* v. *Simmie S. Horwitz,* pending before Honorable Hubert L. Will, Judge of the United States District Court for the Northern District of Illinois, be stayed until further order of this Court.

And, It Is Further Ordered that the United States of America, Petitioner, be granted leave to file its petition for mandamus to vacate the order directing petitioner to answer Item 25(a), (b), (c), (e), (f) and (g) of the Bill of Particulars by Monday, March 21, 1966.

APPENDIX B.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

March 24, 1966

Before

HON. JOHN S. HASTINGS, *Chief Judge*
HON. F. RYAN DUFFY, *Circuit Judge*
HON. LUTHER M. SWYGERT, *Circuit Judge*

UNITED STATES OF AMERICA, *Petitioner,*		
No. 15607	vs.	Rule to Show Cause
HONORABLE HUBERT L. WILL, Judge, United States District Court for the Northern District of Illinois, *Respondent.*		

On June 15, 1965, indictment No. 65 Cr 432 was returned to the District Court for the Northern District of Illinois, charging Simmie S. Horwitz with a violation of Title 26 U. S. Code § 7206(1);

On June 29, 1965, indictment No. 65 Cr 464 was returned to the District Court for the Northern District of Illinois, charging Simmie S. Horwitz with a similar but distinct violation of Title 26 U. S. Code, § 7206 (1). At subsequent proceedings, these two indictments have been considered on a consolidated basis;

On September 7, 1965, defendant filed a motion in the alternative for a bill of particulars. Thereafter, the Government filed an answer in opposition to defendant's motion for a bill of particulars;

On November 29, 1965, the District Court entered an order granting defendant's motion for a bill of particulars except as to 4 and 29(b);

On December 3, 1965, the Government filed a motion to vacate the Court's order of November 29, 1965, with respect to particulars 7, 14, 25, 28 and 29(a). This motion was denied, and the Government has filed answer to all questions contained in defendant's bill of particulars as directed by the Court except questions 25 (a)(b)(c)(e)(f) and (g);

On March 15, 1966, on petition of the Government, this Court granted a stay of all proceedings until further order of the Court and granted the government leave to file its petition for mandamus to vacate the District Court's order directing the Government to answer certain items of the bill of particulars by March 21, 1966;

Petitioner, United States of America, citing *Bowman Dairy* v. *United States,* 341 U.S. 214, *Atlass* v. *Miner,* 7 Cir., 265 F.2d 312, 319 and *Miner* v. *Atlass,* 363 U.S. 461, and claiming the District Court has attempted to extend criminal discovery beyond the provisions of the Federal Rules of Criminal Procedure and the law, and protesting that under established law, the Government need not disclose a list of its witnesses to the defendant in advance of trial, has requested this Court to issue a writ of mandamus directed to Honorable Hubert L. Will, Judge of the United States District Court for the Northern District of Illinois, who signed the orders hereinbefore described;

And the Court being fully advised;

It Is Ordered, that the said Honorable Hubert L. Will, Judge of the United States District Court for the Northern District of Illinois, show cause within twenty (20) days of the date of this order, why a writ of mandamus should not issue from this Court ordering the said Honorable Hubert L. Will to vacate the Court order signed by him directing the Government to answer question 25 contained in defendant's motion for a bill of particulars; and

It Is Further Ordered, that pending the decision of this Court on the issues hereinbefore stated, the United States of America need not answer Question 25 contained in defendant's motion for a bill of particulars.

APPENDIX C.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

July 12, 1966

Before

HON. ELMER J. SCHNACKENBERG, *Circuit Judge*
HON. WIN G. KNOCH, *Circuit Judge*
HON. ROGER J. KILEY, *Circuit Judge*

UNITED STATES OF AMERICA,
Petitioner,

No. 15607 vs.

HONORABLE HUBERT L. WILL, Judge, United States District Court for the Northern District of Illinois,
Respondent.

Petition for Writ of Mandamus

ORDER

This is a petition by the government for writ of mandamus to compel respondent, a district court judge, to vacate his order which effectually directs the government in a criminal cause to give the defendant names and addresses of persons to whom defendant in said cause made oral statements to support the charges in the indictments. Briefs have been filed in this court by both parties. The court has considered the briefs and is fully informed of the points made and the positions of the parties with respect to the issue, and

The court finds that the order subject of the petition is not an appealable order, and a review of it would offend the policy against piecemeal appeals in criminal cases, *Cobbledick* v. *United States,* 309 U.S. 323; that mandamus may not be used as a means of reviewing the non-appealable order, *Roche* v. *Evaporated Milk Association,* 319 U.S. 21; that federal courts use mandamus for the traditional purpose of confining a district court to a lawful exercise of its jurisdiction or to compel it to exercise its proper jurisdiction, *Roche* v. *Evaporated Milk Association;* that the district judge's order upon the government to furnish names and addresses of witnesses to a defendant may be erroneous, a question we do not decide, but the ruling itself was within the court's jurisdiction, *Roche* v. *Evaporated Milk Association;* that the ruling can be reviewed on appeal from a final judgment; and that there is no question here that the district judge refused to exercise his proper jurisdiction.

It Is Therefore Ordered that the petition for writ of mandamus be and it is hereby denied.

A True Copy:

Teste:

Kenneth J. Carrick

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX D.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

August 16, 1966

Before

HON. ELMER J. SCHNACKENBERG, *Circuit Judge*
HON. WIN G. KNOCH, *Circuit Judge*
HON. ROGER J. KILEY, *Circuit Judge*

UNITED STATES OF AMERICA,
Petitioner,

No. 15607 vs.

HONORABLE HUBERT L. WILL, Judge, United States District Court for the Northern District of Illinois,
Respondent.

Petition for Writ of Mandamus

ORDER

This cause came on to be heard upon the government's Petition For Reconsideration of the Order of July 12, 1966, and for a hearing on the merits, and upon the opposition of respondent to the granting of the petition; and the court being fully advised has reconsidered its order of July 12, 1966:

The court finds that in the circumstances of this particular case the court should consider the merits of the ruling of the district court challenged by the government, rather than to remit the government to a radical alternative appealable judgment available to the trial judge upon the government's persistent refusal to comply;

It is therefore ordered that the order of this court of July 12, 1966, be and it is hereby vacated, and the cause is taken by the court upon the petition for the writ, the briefs of both parties and the record.

APPENDIX E.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Tuesday, October 4, 1966

Before

HON. ELMER J. SCHNACKENBERG, *Circuit Judge*
HON. WIN G. KNOCH, *Circuit Judge*
HON. ROGER J. KILEY, *Circuit Judge*

UNITED STATES OF AMERICA,
Petitioner,
No. 15607 vs.
HONORABLE HUBERT L. WILL, etc.,
Respondent.

Petition for Stay

This cause came on to be heard upon the Government's petition for writ of mandamus ordering respondent to vacate his order directing the Government to answer question 25 in defendant's motion for bill of particulars, which question sought, among other things, the names and addresses of persons to whom defendant made oral statements supporting the indictment charging wilfull evasion of income tax, and which statements the Government would rely upon at the trial; upon the rule issued upon respondent to show cause why the writ should not issue; upon the brief of respondent answering the rule, and the brief of the Government; and upon the record.

And the Court having on August 16, 1966 vacated its July 12, 1966 order denying the writ, and having reconsidered the question,

It Is Ordered that a writ of mandamus issue as prayed in the Government's petition directing respondent to vacate his order directing the Government to answer question 25 in defendant's motion for bill of particulars.

A True Copy:

Teste:

Kenneth J. Carrick

Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX F.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

Monday, December 5, 1966

Before

HON. JOHN S. HASTINGS, *Chief Judge*
HON. ELMER J. SCHNACKENBERG, *Circuit Judge*
HON. WIN G. KNOCH, *Circuit Judge*
HON. LATHAM CASTLE, *Circuit Judge*
HON. ROGER J. KILEY, *Circuit Judge*
HON. LUTHER M. SWYGERT, *Circuit Judge*
HON. THOMAS E. FAIRCHILD, *Circuit Judge*
HON. WALTER J. CUMMINGS, JR., *Circuit Judge*

UNITED STATES OF AMERICA, *Petitioner,*		
No. 15607	vs.	Petition for Stay
HONORABLE HUBERT L. WILL, etc., *Respondent.*		

It Is Ordered by the Court that the petition for a rehearing *en banc* of this cause be, and the same is hereby DENIED.

(Cummings, C. J. voted to grant petition for rehearing *en banc*).

A True Copy:
Teste:
Kenneth J. Carrick
Clerk of the United States
Court of Appeals for the
Seventh Circuit.
By *H. K. McCormack*
Deputy Clerk

APPENDIX G.

CONSTITUTIONAL PROVISIONS, RULE AND STATUTES INVOLVED

The Fifth Amendment to the Constitution of the United States provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

§7206(1) Internal Revenue Code 1954 (26 U.S.C. 7206 (1)) provides:

> "Any person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000.00, or imprisoned not more than 3 years, or both, together with the costs of prosecution."

Section 1404, Title 18 United States Code provides:

> "In addition to any other right to appeal, the United States shall have the right to appeal from an order granting a motion for the return of seized property and to suppress evidence made before the trial of a person charged with a violation of

"(1) any provision of part I or part II of subchapter A of chapter 39 of the Internal Revenue Code of 1954 the penalty for which is provided in subsection (a) or (b) of section 7237 of such Code,

(2) subsection (c), (h), or (i) of Section 2 of the Narcotic Drugs Import and Export Act, as amended (21 U.S.C., sec. 174), or

(3) the Act of July 11, 1941, as amended (21 U.S.C., sec. 184a).

"This section shall not apply with respect to any such motion unless the United States attorney shall certify, to the judge granting such motion, that the appeal is not taken for purposes of delay. Any appeal under this section shall be taken within 30 days after the date the order was entered and shall be diligently prosecuted."

Section 3432, Title 18 United States Code provides:

"A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness."

Section 3731, Title 18 United States Code provides:

"An appeal may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases in the following instances:

"From a decision or judgment setting aside, or dismissing any indictment or information, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment or information is founded.

"From a decision arresting a judgment of conviction for insufficiency of the indictment or information, where such decision is based upon the invalidity or construction of the statute upon which the indictment or information is founded.

"From the decision or judgment sustaining a motion in bar, when the defendant has not been put in jeopardy.

"An appeal may be taken by and on behalf of the United States from the district courts to a court of appeals in all criminal cases, in the following instances:

"From a decision or judgment setting aside, or dismissing any indictment or information, or any count thereof except where a direct appeal to the Supreme Court of the United States is provided by this section.

"From a decision arresting a judgment of conviction except where a direct appeal to the Supreme Court of the United States is provided by this section.

"The appeal in all such cases shall be taken within thirty days after the decision or judgment has been rendered and shall be diligently prosecuted.

"Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be admitted to bail on his own recognizance.

"If an appeal shall be taken, pursuant to this section, to the Supreme Court of the United States which, in the opinion of that Court should have been taken to a court of appeals, the Supreme Court shall remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal had been taken to that court in the first instance.

"If an appeal shall be taken pursuant to this section to any court of appeals, which, in the opinion of such court, should have been taken directly to the Supreme

Court of the United States, such court shall certify the case to the Supreme Court of the United States, which shall thereupon have jurisdiction to hear and determine the case to the same extent as if an appeal had been taken directly to that Court."

Section 1291, Title 28, United States Code provides:

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

Rule 7(f) Federal Rules of Criminal Procedure provides:

"The court for cause may direct the filing of a bill of particulars. A Motion for a bill of particulars may be made only within ten days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires."